REMARKS

This paper is responsive to the premature Final Rejection of March 25, 2008. Reconsideration and allowance of claims 1, 2, and 6-20 are requested.

The Office Action

Claims 1, 2, 4, 6, 11, and 13-16 stand rejected under 35 U.S.C. § 103 as being obvious over Byers (US 4,969,468) in view of Owen (US 6,148,233).

Claim 7 stands rejected under 35 U.S.C. § 102 or 35 U.S.C. § 103 as being anticipated by or obvious over Byers.

Claims 8-10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Byers.

Claim 12 stands rejected under 35 U.S.C. § 103 as being unpatentable over Byers in view of Ingman (US 2002/0082668).

The Finality of the March 25, 2008 Rejection is Premature

In paragraph 20, the Examiner asserts that the new ground of rejection was necessitated by applicants "amendment" of February 6, 2008. The "amendment" of February 6, 2008 was a request for reconsideration in which no claims were amended. Accordingly, it is submitted that the new ground of rejection applied at least against claims 7, 10, and 14 was not necessitated by any amendments to the claims made by the applicant.

Because the Finality of the Office Action of March 25, 2008 was premature, the applicant is entitled to entry of the foregoing amendment.

The Arguments Presented in the February 6, 2008 Request for Reconsideration Are Incorporated Herein By Reference

The applicant again directs the Examiner's attention to the February 6, 2008 Request for Reconsideration and the arguments presented starting at page 3 in the section entitled "The Claims Distinguish Patentably Over the References of Record". Please consider these arguments as being presented herein again in their entirety. These arguments clearly and succinctly point out the deficiencies in the Examiner's current rejection.

Supplemental, simplified arguments are presented herein below.

Supplemental Arguments For the Patentability of the Claims

Claim 1 calls for an electrode including a body of an electrically conductive material with a working surface exhibiting projections of said same electrically conductive elastic material. In paragraph 15 of the Office Action, the Examiner asserts that the Byers electrode is "made out of a conductive, flexible, stretchable material with projections made out of metal..." Leaving aside the arguments concerning the flexibility or stretchability of the **base** of Byers which are fully argued in the February 6, 2008 Request for Reconsideration, even by the Examiner's own admission, the projections of the Byers electrode are made out of metal. First, the metal electrodes of Byers are not of an electrically conductive elastic material. Note that the definition of elasticity cited in the February 6, 2008 Request for Reconsideration from the *Concise Encyclopedia of Polymer Science & Engineering, Wiley & Sons, Copyright 1990*, expressly excluded metals from elastic materials. Second, unlike claim 1 which calls for the body and the projections of the electrode to be made of the same material, the projections of Byers are made out of metal and the base is made out of another material such as the traditional solid-state device ceramic base layers of silicon, sapphire, or germanium (column 10, lines 22-30).

Owen does not cure this shortcoming of Byers. Indeed, in paragraph 16, the Examiner applies Owen for aspects going to the system and not for details of the electrode. Accordingly, it is submitted that **claim 1 and claims 2, 6, and 13-17 dependent therefrom** distinguish patentably and unobviously over the references of record.

Claim 7 calls for an electrically conductive elastic layer. Column 10, lines 22-30 referenced by the Examiner suggest that the base 7 of Byers might be flexible, curved, or stretchable. Leaving aside the previously presented arguments that Byers provides no enabling disclosure as to how this would be achieved, the base 7 of Byers, even if flexible and stretchable, is an insulator, not an electrically conductive layer. In Byers, the most analogous structure is the metal foil layer 9. As referenced above, the *Concise Encyclopedia of Polymer Science & Engineering,*

Wiley & Sons, Copyright 1990, expressly excludes metals from elastic materials. Thus, Byers does not disclose an electrically conductive elastic layer.

Second, claim 7 calls for flexible insulating layers covering the faces of the electrically conductive elastic layer. Even if the insulating layer or insulating base 7, 8, of Byers were flexible, Byers still calls for the metal layer 9 to be deposited such as by vapor deposition, and for the SiO_2 ceramic layer to be grown on the metal layer 9. Accordingly, the insulating layer 15 of Byers is not flexible.

Third, claim 7 calls for the metallic elements to be embedded in the electrically conductive elastic layer. By contrast, the metal needles of Byers are grown on the metal layer 9. There is no suggestion in Byers that the needles should be embedded in the metal foil layer 9 or the base 7. The metal layer, again, is not elastic. The needles of Byers do not extend to nor are they embedded in the base 7.

Accordingly, it is submitted that **claim 7** is not anticipated by Byers.

Although the Examiner now rejects claim 7, in the alternative, as being unpatentable in the sense of 35 U.S.C. § 103 over Byers, the Examiner's rejection in paragraphs 5, 6, and 7 purport to find all addressed limitations within the four corners of Byers. No modification to the Byers structure is suggested in paragraphs 5, 6, or 7 of the Office Action. Accordingly, it is submitted that the Examiner has not made an appropriate 35 U.S.C. § 103 obviousness rejection. Conversely, if the Examiner is proposing to modify the Byers structure in some way, it is requested that the Examiner clarify how and by what motivation or for what other reason he is modifying the structure of Byers. Please note again, "The Claims Distinguish Patentably Over the References of Record" section of the February 6, 2008 Request for Reconsideration which points out the necessity for the Examiner to explain his rejection.

Accordingly, it is submitted **that claim 7 and dependent claims 8-12** also distinguish patentably and unobviously over the references of record.

New claims 18-20 have been presented to claim another aspect which is set forth in various paragraphs of the application including paragraph 20. There being no outstanding rejection of claim 18, the applicant need not distinguish claims 18-20 over such unapplied references. However, in order to expedite an early allowance of

this application, the applicant voluntarily presents the following reasons for patentability.

Claim 18 calls for a layer of electrically conductive elastic material. It should be noted that the base layer 7 of Byers is not electrically conductive. The foil layer 9 of Byers is a metal which, by the above-discussed definition from the *Concise Encyclopedia of Polymer Science & Engineering, Wiley & Sons, Copyright 1990*, is excluded from elastic materials.

Further, claim 18 calls for a plurality of prefabricated conductive particles that are pressed into but project from a face of the layer of electrically conductive elastic material. By contrast, the needles of Byers are grown on the foil layer 9. Byers makes no suggestion of pressing prefabricated electrically conductive particles into an electrically conductive elastic material.

Accordingly, it is submitted that claims 18-20 are not anticipated by and distinguish patentably and unobviously over the references of record.

CONCLUSION

For the reasons set forth above, it is submitted that claims 1-2 and 6-20 are not anticipated by and distinguish patentably and unobviously over the references of record. An early allowance of all claims is requested.

Respectfully submitted,

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